IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 69 OF 2006

V.G. CHAVDA ..... APPLICANT

VERSUS

1. ATTORNEY GENERAL
2. THE DIRECTOR OF IMMIGRATION ..... RESPONDENTS
3. THE HON. MINISTER FOR HOME AFFAIRS

(Application to restraint order and extension of time from the decision of the High Court of Tanzania at Dar es Salaam)

(Msumi, J.K.)

dated the 11th day of March, 2004
in
Miscellaneous Civil Cause No. 60 of 2003

R U L I N G

6 & 12 July 2006

MROSO, J.A.:

The applicant filed a Notice of Motion in this Court under Rules 3 (2) (a) and 45 (1) of the Court Rules, 1979 (The Rules), praying for the following substantive orders:-

1. That the Court issue orders to restrain the second and third respondents from deporting the Applicant until when his case is determined by this Honourable Court.
2. That this Honourable Court grant an

extension of time to enable the applicant to stay in Tanzania legally until the cases filed against him are completed or in the alternative that this Court remit the case file to the High Court for an application for extension of time to be heard by that court.

Before the application could come for hearing the Attorney General filed a notice of Preliminary Objection under Rule 3 (2) (a) of the Rules on his own behalf and on behalf of the other two respondents. The grounds for objection read as follows:-

1. The application is incompetent for being time barred.

2. The application has no legs to stand upon (sic) since the applicant did not intend to appeal against the ruling of Msumi, J.K. when reference was made to two years of stay in Tanzania.

At the hearing of the Preliminary Objection the

respondents were represented by Ms Sehel, learned State Attorney, and Dr. Tenga, learned advocate appeared for the applicant.

Ms Sehel said the first ground of objection was directed at the second prayer in the Notice of Motion. According to her, if the applicant wanted the Court to order that the applicant should remain in the country legally beyond the two years, reckoned from 11th March, 2004, which were granted by the High Court, Msumi, J.K. such application should have been made within sixty days from 10th March, 2006 when the two year period expired. That was because all applications to the Court for extension of time must be made within sixty days from the date the period sought to be extended expired. Such time limit was fixed by this Court in **Seleman Ally Nyamalegi and Others v Mwanza Engineering Works,** Civil Application No. 9 of 2002 (unreported) and **James Masanja Kasuka v George Humba,** (Tabora) Civil Application No. 2 of 1997 (unreported), she argued. Thus, when the applicant brought the Notice of Motion on 1st June, 2006 it was already time barred. For that reason, she said, the application should be dismissed with costs.

As regards the second ground of objection Ms Sehel

contended that the applicant could not have made the application to the Court because he had no appeal of his own which was pending in this Court and, therefore, the application had no ground to stand on. He could not rely on the appeal which was filed by the respondents against the ruling of the High Court as a basis for the application. For that reason as well she prayed that the Notice of Motion be struck out as incompetent.

Dr. Tenga made the counter argument that the Preliminary Objections at this juncture were misconceived, regardless of whether or not they had merit. It was not necessarily correct to say that Msumi, J.K. meant that if an aggregate of two years from the date of his order expired before the cases against the applicant were decided then the applicant would cease to be legally present in the country. He said that since his client was issued with a re-entry pass which was valid until on the 27th day of July, 2006, he was entitled to be lawfully present in the country and could apply at any time before 26 July, 2006 for extension of his lawful stay in the country pending the finalization of the cases against him in this country. It means therefore, according to Dr. Ringo as I understood him, that there is need first, for interpreting the orders in the ruling by Msumi, J.K. before the respondents could validly raise the kind of Preliminary

Objections now before me.

In reacting to the second ground of objection Dr. Ringo argued that the applicant has rightly made the application to this Court first, because the High Court record is now in this Court and for that reason the applicant had no option but to come to this Court. Second, since the applicant had succeeded before the High Court he had no reason to appeal to this Court against that decision. Third, it was not necessary for the applicant to file an appeal to this Court in order to get *locus standi* to file the application. It was enough that there was the appeal before the Court in which he was a party to obtain *locus standi* for his application in this Court. Fourth, that in the event the Court considered that the application ought not to have been filed in this Court, then the lower court record should be remitted to the High Court where the application would then be made.

It seems to me that both counsel have placed differing interpretations to the words in the two orders of Msumi, J.K. in the last paragraph of his ruling. For convenience, let me quote the two orders:-

> First the order of the first respondent expelling the applicant whilst the cases against him are still pending in court is

> quashed. Secondly first respondent is directed to issue the applicant with the relevant immigration document which will entitle the applicant to legally stay in Tanzania until the cases filed against him are completed or for an aggregate period of two years, whichever precedes the other. The two year period is with effect from the date of this ruling ……

The question that needs to be asked for purposes of the Preliminary Objection is, what is it that applicant wishes to be extended, according to his second prayer in the Notice of Motion? It seems obvious that what the applicant wants is that he should continue staying in the country for as long as the cases against him remain pending in the courts in this country. In order to achieve that wish he believes he needs an order of this Court or the High Court directed to the relevant authorities requiring them to issue to him necessary documents that will make his further stay in the country lawful. Now, does the Appellate Jurisdiction Act, 1979 or the Rules of Court, 1979 or case law provide a time limit for making application for such a court order? Ms Sehel contends that case law has put such a time limit and she cited the two cases mentioned earlier in this ruling. In the **James Masanja Kasuka** case for example, this Court in

dealing with an application for review which was made five years after the decision which was sought to be reviewed we fixed sixty days as the period within which an application for review ought to be made. However, although we said in that application:-

> We accordingly set the time limit of sixty days in civil applications we did not mean that in every kind of civil application the time limit is sixty days. The words “civil applications” should be understood and confined to the context in which they appear. The Court had said that the period of limitation in an application for review in criminal matters had been fixed by the Court in the case of **DPP vs Prosper Mwalukasa,** Criminal Application No. 6 of 2000, to be sixty days. It was therefore “proper and reasonable” to also fix a period of limitation in applications for review in civil matters. In that context the Court said:-
>
> We accordingly set the limit of sixty days in civil applications as we have for

criminal applications for review.

So, the Court in **James Masanja Kasuka** fixed the limit of sixty days for civil applications for review only.

In the **Seleman Ally Nyamalegi** case a single judge of this Court considered the time limit for applying for stay of execution. Apparently the application before him had been made more than sixty days from the date of the decision the execution of which was being sought to be stayed. The court decided that according to previous decisions of the Court such as **Israel Solomon Kivuyo v Waiyani Langoi and Nashooki** [1989] TLR 140 the application was time barred. The Court then made reference to the **James Masanja Kasuka** decision and specifically referred to the words "civil applications" appearing in that case. The learned single judge was of the view that the sixty days limitation period applied to all civil applications. But in view of what I said earlier on what I consider to be the import of those words, I am constrained to dissociate myself from the obiter in the **Nyamalegi** case. The first ground of objection is therefore overruled. But in doing so I am not by any manner of means thereby saying that the time for making an application such as the one before me is infinite. All I am saying is that no period of limitation has been fixed as yet.

In support of the second ground of objection Ms Sehel promised to send to Court case law authorities to the effect that since the applicant did not have an appeal filed by him in this Court, he was not entitled to file this application. Unfortunately, she did not send the authorities up to the time I was composing this ruling. I must say however, that I am not aware that the law requires that the applicant should have an appeal of his own to give him locus in this Court for his application. I am of the considered view that as long as there is a pending appeal in this Court between him and the respondent he can file an application of the kind that he filed which is based on the pending appeal. With respect, there is, therefore, no legal basis for the second ground of objection.

The Preliminary Objection is overruled with costs. It is ordered that the application should be heard on a date to be fixed.

DATED at DAR ES SALAAM this 12th day of July, 2006.

J.A. MROSO
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(S.M. RUMANYIKA)
DEPUTY REGISTRAR